

INSTRUCTIONS AND APPLICATIONS FOR
CONDITIONAL REZONINGS

City of Lynchburg, Virginia
Department of Community
Planning and Development
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INTRODUCTION

We are pleased to provide this package entitled “Instruction and Applications for Conditional Rezoning.” Preparation of this package was requested by the City Council in order to provide some assistance to the public in filing applications for conditional rezonings. The user of this information must take extreme care to understand that each petition to rezone is unique. The proffers that will make one petition successful may very well have no impact on the outcome of another petition.

Ideally, before submitting an application to rezone, a petitioner should attempt to meet with representatives of the neighborhood in which a petition is contemplated and find out what that neighborhood feels would make the petition acceptable. This meeting would allow the petitioner to tailor his application around the concerns of the immediate community and many potential conflicts may be avoided.

The next step for the petitioner is to then make an appointment to meet with Planning Division staff to review the draft petition. At this meeting, advice may be given regarding concerns of a more universal nature than those of the immediate neighborhood. After this the petitioner is ready to make final decisions on what proffers he wishes to make regarding his petition. His final petition can then be drafted and submitted. The petition must be submitted at least thirty (30) days prior to the first public hearing before the Planning Commission.

CONDITIONAL ZONING

PART I

- A. Purpose of Conditional Zoning. The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development and use of land in those situations in which peculiar specific circumstances indicate that the existing zoning ordinance district regulations are not adequate. In such instances reasonable conditions voluntarily proffered by the owner of the subject property to which such conditions are applicable for the protection of the community (which conditions are not generally applicable to other land similarly zoned) when considered with existing zoning ordinance district regulations should cause the requested rezoning to be compatible with existing zoning and uses in the area.
- B. Approval of Conditions as part of a Rezoning Amendment to Zoning Map. The owner of the property which is the subject of a rezoning request shall, if he elects to obtain conditional zoning, voluntarily proffer in writing such conditions as he deems appropriate at the time of filing an application to rezone the property or by such later date as the Commission shall establish in its rules and regulations; but in any event before the Planning Commission makes its recommendation to City Council.

In the event that additions or modifications are desired by the owner, of the property which is the subject of the rezoning request, the same shall be made in writing no less than twenty-one (21) days prior to the time at which the Planning Commission makes recommendation to City Council unless the Commission:

1. Specifically waives such time period or;
2. Specifically establishes such greater or lesser time period, as it deems reasonable.

City Council may consider additional proffers, deletions, and/or amendments to all such conditions provided same have been voluntarily proffered in writing by the owner of the property which is the subject of the rezoning request prior to advertising the public hearing at which City Council renders its decision thereon.

- C. Permitted Conditions as part of a Rezoning or Amendment to Rezoning Map. City Council may approve reasonable conditions to rezoning provided that the following criteria are met:
1. The rezoning itself must give rise to the need for the conditions.
 2. Such conditions shall have a reasonable relation to the rezoning.
 3. Such conditions shall not include a cash contribution to the City.
 4. Such conditions shall not require mandatory dedication of real or personal property for open space, parks, schools, fire stations, or other public facilities not otherwise authorized by law.

5. Such condition shall not include payment for or construction of off-site improvements except those sewage or drainage facilities otherwise authorized by law.
6. No condition shall be proffered that is not related to the physical development or physical operation of the property.
7. All such conditions shall be in conformity with the City's General Plan.
8. The provisions of this ordinance shall not be used for the purpose of discrimination in housing.

D. Conditions that can be Proffered. The conditions that can be voluntarily proffered cover just about every physical and operational element of a development process. They go far beyond the matters normally treated in a zoning review. They can include:

- Uses and mixture of uses
- Densities (both people and of buildings)
- Height, setbacks, orientation of facilities
- Landscaping (internal) and buffering (to the outside)
- Internal street systems and pedestrian pathways
- Exterior design and materials
- Lighting
- Method of handling and retaining storm drainage, effluent discharge, and solid waste
- Staging and timing of development
- Security provisions (both internal and in regard to adjacent areas)
- Restrictions on certain types of activities and/or uses
- Construction and maintenance by the developer of a landscaped berm between certain abutting properties and the facility
- Provision of recreation facility within the development (type, number of each, location, etc.)
- Controls on noise emissions during the construction process

E. Examples of Conditions Proffered.

Example 1 (R-3 to B-3 Conditional)

- (a) Granting to City of Lynchburg sufficient right-of-way for the construction of a deceleration lane in the eastbound lane of Old Forest Road.
- (b) Convey to the City of Lynchburg a 12' additional right-of-way along Old Forest Road for street widening.
- (c) Construction and maintenance of pathways to and from the apartment dwellings lying to the west or rear of the subject property.
- (d) Acquiring and conveying to City of Lynchburg an easement for water and sewer utilities to service the subject property.
- (e) Those usages which will be prohibited from being established on the property as follows: hotels and motels, auditorium, banquet hall, vocational schools and colleges, funeral or undertaking establishments, movie theaters, gymnasiums, health salons, outdoor restaurants, fast food restaurants, auto service stations, rentals, veterinary hospitals, auto rentals, trailer rentals, or commercial recreation areas.

Example 2 (B-1 to B-3 Conditional)

- (a) The property will be used as a site for a restaurant completely enclosed within a building. The building will not have drive-in window facilities.
- (b) In the event the owner elects to sell and/or lease the property, he may do so to a user that is allowed under the B-2, Local Neighborhood Business District classification.
- (c) The front position, from Langhorne Road back to a depth of 300', will be used for business with the balance of the property remaining undisturbed.
- (d) A 10' buffer will be established between the property line of John Q. Public and the improved portion of the subject property. This buffer will be planted with evergreens a minimum of 4' in height and maintained by the owner of the subject property.

Example 3 (R-1 to R-4 Conditional)

- (a) Multi-family residential dwellings will consist of 27-four unit, and 6-six unit apartments, laid out substantially as shown on preliminary site plan of X42 for John Petitioner, dated February 19, 1981, made by David Drafter, C.L.S.
- (b) Twenty-five foot buffer zone will be maintained as shown by shaded area on above-mentioned preliminary site plan.
- (c) A tract of approximately 2-1/2 acres will be provided on the front of proposed site for recreational purposes as per preliminary site plan. This tract will be improved to include various playground facilities.
- (d) The recreation area will be developed simultaneously with the apartment complex.
- (e) All recreation facilities will be installed completely at time of complex completion.
- (f) Recreation facilities to include as follows: (Location of the facilities to be shown on final site plan.)
 - 10-picnic tables 4' x 6' with attached seats and constructed of 2" x 6" salt treated timber.
 - 5-11104-4 Charcoal grills – Ref. Miracle Catalog – Page 79.
 - 6-Refuse Containers (45 gal. cap.)
 - 1-Miracle – Whirl – 10 feet in diameter. Reference – Miracle Rec. Equip. Catalog 1980 Edition Page 10, Supplier – Larry Halsey & Assoc., Inc., Greensboro, N.C.
 - 1-30' x 40' asphalt pad including basketball goal complete. Ref. Same as above except Page 88, Model #360-753.
 - 2-Spring Type Animals – Ref. Miracle Catalog Page 40.
 - 1-Trailblazer Slide – Reference same as above except see Page 17, Model/1106.
- (g) Access walks to recreation area (2) to be asphalt 4' wide and located (1) at north end of northeast parking lot, and (1) at south end of northeast parking lot.
- (h) Culverts – metal or concrete to be installed as required for easy access across spring stream.

NOTE: All large trees will remain for shade and buffer. If aforementioned model units are not available, units of same commercial quality will be used.

F. Procedure For A Conditional Zoning Request

1. Preliminary Discussion with the Planning Division.

It is recommended that at the earliest possible date the applicant meet with the Planning Division to discuss his rezoning proposal. At this meeting the Planning staff will explain the conditional zoning process; make suggestions on items that should be considered by the

applicant in developing his proposal; and inform him of any prior City Council action on rezoning petitions in the area. The purpose of this preliminary discussion is for informational purposes only and is not to be considered as a staff recommendation. The staff recommendation (supporting the proposal or opposing it) will be made in the report to the Planning Commission.

2. Complete and submit a Conditional Zoning Application thirty (30) days prior to the Planning Commission meeting.

The Planning staff will review the application and note to the applicant any problems with it. Any corrections, additional documentation, or changes to the proffers must be completed prior to the publishing of the legal notice in the local newspapers. (The Planning staff is prohibited by State law from writing any of the proffers being submitted by the applicant.)

3. The applicant, or his representative, must attend all public hearings on the rezoning petition.

G. Amendments and Variations of Conditions. All amendments and/or variations of adopted conditions shall be made in accordance with the provisions of Section 35.1-43 above and other applicable law.

H. Time Restriction for new Petition. After City Council has taken official action either granting, denying, or permitting withdrawal of a petition for any change in zoning or any change of zoning conditions, no other petitions for substantially the same change(s) shall again be considered in less than twelve (12) months from the date of such official action without the approval of three-fourths of the members of Council.

PART II

REQUEST TO AMEND ZONING ORDINANCE

ZONING APPLICATION

(CONDITIONAL)

1. A petition (application) requesting a conditional zoning amendment must be submitted to the Division of Planning by the petitioner, a minimum of thirty (30) days prior to the public hearing date for the Planning Commission.
2. The petition shall be accompanied by the following:
 - a. A check in the amount of four hundred dollars (\$400) plus seventy-five (\$75) per acre to cover the cost of publishing legal notices and administrative expenses for hearings before the Planning Commission and the City Council.
 - b. A map showing the subject property (preferably a copy of the Valuation Map available from the Public Works Department, City Hall).
 - c. Thirteen (13) copies of a preliminary site plan indicating proposed use of the property. (The petition will be placed on the first available Technical Review Committee (TRC) agenda. The appropriate site plan review fee will be charged to the petitioner. This charge is in addition to the four hundred dollar [\$400] plus seventy-five [\$75] per acre fee).
 - d. Two (2) photographs of each required sign providing notification of the proposed rezoning. The first photograph shall show the wording on the sign, and the second photograph shall show the sign's location on the property.

NOTE: Thirteen (13) copies of the appropriate site plan will be required prior to the Planning Commission meeting and an additional eighteen (18) copies prior to the City Council meeting. **The site plan MUST be larger than 11" x 17".**

At the time an application is filed with the Division of Planning, a sign shall be posted on the property by the applicant notifying interested persons that a rezoning application has been filed. Said sign shall be located within one (1) foot of the right-of-way of a public street or road upon which said property or proposed use fronts.

The sign shall be placed on the property at five hundred (500) foot intervals. If the property in question has five hundred (500) feet or less frontage, one sign shall suffice. Where property does not front on an existing right-of-way, said sign shall be placed within the right-of-way of the nearest street or road. The sign shall read as follows:

48"	<u>NOTICE</u> <u>REQUEST FOR REZONING</u>
	Name of Applicant or Owner:
	Telephone Number:
	Address of Property:
	Present Zoning:
	Proposed Use of Property:
	Additional Information: Call Planning Division, Department of Community Planning and Development, 455-3900
	72"

Said sign shall be of wood or metal, at least forty-eight (48) inches by seventy-two (72) inches in size, and the lettering thereon shall be black letters on a white background and shall be at least three (3) inches in height. The applicant shall notify the Division of Planning in writing that the sign has been erected and where located.

The sign shall contain no additional advertisement or words other than that which is specified herein. Said sign shall remain posted until final action has been taken by the City Council. **After final action has been taken by the City Council or the petition has been withdrawn, the sign shall be removed within ten (10) calendar days by the petitioner at his expense.** If any sign remains posted longer than this ten-day period, the petitioner shall be deemed in violation of this ordinance and subject to the penalties as set forth in Section 35.1-20 of the City Zoning Ordinance, adopted December 12, 1978, or as amended.

3. When a proposed amendment of the Zoning Ordinance involves a change in the zoning classification of twenty-five (25) or less parcels of land, then in addition to the advertising as above required, the Planning Division shall notify the property owner, their agent, and all property owners within two hundred (200) feet of the proposed zone change not less than ten (10) days prior to the public hearing before the Planning Commission. Notification shall be by first class mail; and the cost of this notification shall be taxed to the applicant, unless waived by the City, at a standard rate of current first-class postage for each written notice. If the public hearing is continued, notice shall be re-mailed. Cost of any notice required under this section shall be taxed to the applicant.
4. The petitioner or his representative shall be present at the Planning Commission and City Council meetings at which the proposed zone change is to be considered.

NOTE: A petition will not be considered until the Planning Division is in receipt of all items outlined in Sections 1 and 2. When applicable, charges resulting from the execution of Section 3 above will be billed to the petitioner prior to the Planning Commission public hearing. Additional information concerning site plan requirements is available from the Division of Planning.

5. Following approval by Lynchburg City Council of a conditional zoning petition, and before a building permit may be issued or an existing structure occupied, a petitioner shall:
 - Receive from the Clerk of Council a certified copy of the ordinance approving the conditional zoning petition.
 - File and record in the Office of the Clerk of the Circuit Court of the City of Lynchburg, Virginia, the conditions approved by City Council.
 - Submit a notarized letter to the Clerk of City Council, the Superintendent of Inspections and the City Planner certifying that the conditions have been recorded with the Clerk of the Circuit Court.

In order to meet these requirements, please take the Certified Ordinance, with the required fees, to the Clerk of the Circuit Court to be filed and “indexed under the names of the landowners of the property being conditionally zone.” Also, please have the attached certification notarized and submit three copies of it to: City Planner, City of Lynchburg, Lynchburg, VA 24504.

6. The Planning Commission strongly encourages the petitioner to contact all property owners within two hundred (200) feet of the subject property to inform them of the purpose of the petition and to attempt to resolve any potential problems prior to the scheduled public hearing before the Planning Commission. The Planning Division will provide the petitioner with the names and addresses of the surrounding property owners as soon as possible after receipt of an application.
7. If further information or assistance is needed, please contact the Planning Division, Community Planning & Development, City Hall, Second Floor, 900 Church Street, Lynchburg, VA 24504, Telephone: (434) 455-3900.

CONDITIONAL ZONING CERTIFICATION

I HEREBY CERTIFY THAT ORDINANCE #0-_____ has been filed and recorded in the Office of the Clerk of the Circuit Court of the City of Lynchburg, Virginia.

Signed: _____

Date: _____

State of Virginia
City of Lynchburg

The foregoing was acknowledged before me this ____ day of _____, 20__, by
_____.

My commission expires:_____

Notary Public

CITY OF LYNCHBURG
APPLICATION FOR A CHANGE TO
A CONDITIONAL (WITH PROFFERS)
ZONING DISTRICT CLASSIFICATION

TO: The Honorable City Council Members:

Pursuant to Article IV, Section 35.1-17 and 43.1 of the Zoning Ordinance for the City of Lynchburg, the undersigned owner of the following described property hereby applies for a change of zoning classification from: _____

to: _____

1. NAME/ADDRESS OF FEE SIMPLE PROPERTY OWNER OF RECORD:

Name _____

Address _____

Telephone Number (Area Code) _____

(If the property is owned by an organization that has its headquarters in another location, written authorization to allow the rezoning must be submitted from the parent organization.)

2. The undersigned owner authorizes the entry onto his property by the Planning Commission Members and/or Planning Division Staff during the normal discharge of their duties in regard to the above application.

Signed: _____, Owner

3. The undersigned owner states that no application for substantially the same change in zoning district classification of the above property has been acted upon by City Council within twelve (12) months prior to the date of this application.

Signed: _____, Owner

4. APPLICANT

Owner _____ or Contract Purchaser _____ If Applicant is contract purchaser, written proof of approval by fee simple owner is required. Such proof may be signed statement, copy of purchase agreement stating such condition, or such other instrument as necessary to provide such evidence.

Name _____

Address _____ Zip Code _____

Telephone Number (____) _____ E-Mail _____

5. REPRESENTATIVE

Name _____

Address _____ Zip Code _____

E-Mail: _____

Telephone Number (____) _____ Fax Number (____) _____

Date of Filing _____ Fee Paid \$ _____

6. PROPERTY LOCATION (general locations) - (Example - South line Route 333 approximately 1,000 ft. west of Route 444) _____

7. DESCRIPTION OF PROPERTY

Parcel Number (City Assessor's Valuation Map #) _____

Subdivision _____ Section _____ Block _____

Lot _____ Source of Title: _____ Deed Book # _____

Acreage _____ Page # _____

METES AND BOUNDS DESCRIPTIONS (Provide a separate metes and bounds description for each zone change requested): _____

8. DEED RESTRICTIONS _____

9. PROPOSED USE: (if zoned) _____

10. VICINITY ZONING PATTERN: _____

11. VICINITY LAND USE _____

12. PROFFERS (Please use complete sentences.)

Pursuant to Sub-Section B of Section 35.1-43.1 of Article IX of the City Zoning Ordinance, the undersigned owner hereby voluntarily proffers in writing the following condition which shall be applicable to the property in the event it is rezoned as requested: _____

NOTE: Additional sheets may be attached if necessary. Please indicate number of sheets attached:

Signed _____ (SEAL)

_____ (SEAL)

The above proffers shall be signed by the fee simple property owner of the property which is the subject of the rezoning request, or the duly authorized agent of said fee simple owner acting under the written authorization of the fee simple owner which authorization shall be filed with and become a part of this application.

13. This is to certify that the required sign was posted on the property notifying interested persons that a rezoning application has been filed on _____.

Signed: _____, Petitioner